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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. .....

WILLIAM B. ADAMS,

Petitioner,

v.

ALVIN O. WEST,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays for a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit affirming the judgment of the United States District Court for the District of Columbia in this cause.

OPINIONS BELOW

The United States District Court for the District of Columbia did not render an opinion in dismissing the action of the petitioner, and the United States Court of Appeals for The District of Columbia likewise did not render an opinion but entered only an order affirming the judgment of the said District Court. This order was entered on October 3, 1960 (R. 17). A Petition for Re-

hearing was timely filed on October 17, 1960 (R. 18) and the Petition for Rehearing was denied on November 30, 1960 (R. 19).

JURISDICTION

The final judgment of the said Court of Appeals is set forth on page 19 of the record. It was entered on November 30, 1960, and this petition for a Writ of Certiorari is filed within ninety (90) days after the date of the final order of the Court of Appeals. Jurisdiction is founded upon Title 28 U.S.C., section 1255 (1) 1958 Edition.

QUESTION PRESENTED

Question involved in this case is whether the United States Court of Appeals for the District of Columbia Circuit, without writing an opinion or giving any reasons therefore erred in affirming the judgment of the United States District Court for the District of Columbia in dismissing this action. The complaint filed in this case sets forth a cause of action in favor of the petitioner against the respondent based upon a resolution adopted by the Executive Committee of the District of Columbia Baptist Convention which is set forth on pages 3, 4 and 5 of the record in this case. It is the contention of the petitioner that the complaint filed against the respondent in the District Court constituted a cause of action. No reason was given by the Judge of the District Court as to why the complaint was dismissed, nor was any opinion rendered by the United States Court of Appeals in this case as to why they affirmed the judgment of the Court below. The question therefore appears to be whether the complaint filed in this case constituted a cause of action in favor of the petitioner and against the respondent.

The petitioner contends that the resolution adopted by the District of Columbia Baptist Convention which ap-

pears on pages 3, 4 and 5 of the record libeled the petitioner. The respondent drafted this resolution and aided and abetted in its adoption, circulation and publication.

The motion to dismiss this action admits all of the facts as pleaded in the complaint.

STATEMENT OF THE CASE

Petitioner in this case was at the time of the adoption, circulation and publication of the libelous resolution, as set forth on pages 3, 4 and 5 of the record, a Baptist minister as alleged in paragraph 2 of the complaint shown on pages 1 and 2 of the record.

Paragraph 2 of the complaint alleges, "that the petitioner is a duly ordained Minister of the Baptist faith, and has so served since the year 1923; That he was duly ordained in the year 1927 at Walton, New York by the Franklin Baptist Association of the New York Baptist Convention and that the petitioner holds a degree of Bachelor of Arts from the University of Pennsylvania and TH B from the Eastern Baptist Seminary; that he is a member and a Fellow of the Royal Geographical Society, served as a Director of the World Mission Million Dollar Campaign for a period of eighteen months; Served as a Chaplain in the United States Army with the highest rank of Major from April 1, 1941 through March 19, 1946; That he was President of the Lions Clubs in Orange, Virginia in the year 1938; Served as President of the Teachers and Parents Association in Orange, Virginia during the year 1939; Chaplain of the Civitan Club in Rockville, Maryland for seven years, and now a member of the Kiwanis Club in Bethesda, Maryland; For five years was the Department Chaplain of the American Legion for the Department of the District of Columbia; Was Department Commander of the American Legion for the District of Columbia in the years 1953 and 1954, and entitled to use, because of the degrees awarded to him, the

affix to his name of Doctor of Theology; That the petitioner is well and widely known throughout the District of Columbia, and the States of Virginia and Maryland, having over the years been the speaker at many and various clubs holding luncheons and dinners in the District of Columbia, and the States of Virginia and Maryland."

The petitioner alleges in paragraph 3 of the complaint that he organized the church known as the Temple Hill Baptist Church located at 9400 Rockville Pike, Bethesda, Maryland, and ever since November 1952 he has well and faithfully carried out the duties of that church of the Baptist faith since the date he became its Pastor. The church has been a member of the District of Columbia Baptist Convention.

In paragraph 5 of the complaint, it is alleged that a disagreement had arisen between the petitioner, as the Pastor of the Temple Hill Baptist Church, and the District of Columbia Baptist Convention as to certain funds to be allocated to the said church. The funds in question were regularly allocated to the church and it is admitted that the amounts of the appropriations made by the said District of Columbia Baptist Convention to the Temple Hill Baptist Church had not been paid in full. When a claim was made for funds which had been allocated to the petitioner's church, the Executive Committee of the District of Columbia Baptist Convention at its meeting on March 12, 1959 adopted a resolution which is set forth on pages 3, 4 and 5 of the record.

In paragraph 6 it is alleged that the respondent prepared the said resolution knowing full well as a learned attorney and a member of the Bar of the District of Columbia that libelous matter was contained in said resolution particularly as to this petitioner, but the said respondent nevertheless aided, counseled and abetted in the adoption of the said resolution knowing full well that the said resolution would be published and circulated among the Pastors of the Baptist Church in the District

of Columbia, to the Members of said Churches in the said District of Columbia, and to the Public Generally, and to other persons not members of the Executive Committee of the District of Columbia Baptist Convention who were present at the said meeting of March 12, 1959. It is undisputed that the respondent drafted the resolution, counseled, aided and abetted in its adoption, circulation and publication.

The complaint alleged that the libelous statements complained of were false and known to be false by the respondent when he drafted the resolution. In his deposition he practically admitted that he knew the resolution libeled the petitioner. This admission from a lawyer of some years standing and practice.

REASONS FOR GRANTING THE WRIT

The petitioner asserts that this application for a writ is made in accordance with subdivision (b) of paragraph 1 of Rule 19 of this Court, in that the United States Court of Appeals for the District of Columbia Circuit has decided a question of law in conflict with applicable decisions of this Court and has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by a lower Court as to call for exercise of this Court's power of supervision.

The petitioner is a Baptist pastor, the respondent a lawyer familiar with the law of libel and slander. It is a general rule of law that defamatory imputations in respect to a clergyman or a minister of the gospel in his religious calling or profession are actionable per se.

Smith v. Buffalo Times, 209 N.Y. Sup. 225, affirmed 214 App. Div. 759

Pentuff v. Park, 138 S.E. 616, 194 N.C. 145, 56 ALR 626

Cobbs v. Chicago Defender, 31 N.E. 2d 323, 308 Ill. App. 35

So we must start out on the premise that any language that is defamatory which injures a clergyman or a min-

ister in his religious calling is actionable per se. It is not necessary to use an innuendo where the publication is defamatory on its face.

Chambers v. National Battery Co., 34 Fed. Suppl. 834
Peinhardt v. West, 115 Sou. 88, 217 Ala. 12
Central Arizona Light & Power Co. v. Akers, 48 Pac. 2d 126, 45 Ariz. 526
Washer v. Bank of America, 136 Pac. 2d, 297, 21 Cal. 2d 822
Thatchery v. Patterson, App. D.C. 157 F.2d 614

In view of the foregoing citations, let us examine the language used in the libelous resolution referring to the petitioner.

The libelous resolution generally charges the petitioner in this case with prosecuting false, fictitious and illegal claims against the District of Columbia Baptist Convention. The resolution itself refers as follows: (R. 4-5)

> "WHEREAS, the Executive Committee finds that the unfounded demands for money and the threat of litigation by Mr. Adams and the Trustees of the Temple Hill Baptist Church tend to create disharmony within the Convention and are conclusive evidence of an attitude and spirit which make said church unworthy of further financial support by the Convention:
>
> "FURTHER RESOLVED, that the Executive Committee express its grave concern at and disapproval of the action of Mr. Adams and the Trustees of Temple Hill Baptist Church in demanding payment by the Convention of money to which the church is not entitled and in threatening litigation if their demand is not met."

And the conduct of the petitioner in presenting false, fictitious and illegal claims for money was held to be conclusive evidence of an attitude and spirit which made his church unworthy of further financial support, and because he was prosecuting false, fictitious and illegal claims, the operational aid of $75.00 being paid to Temple Hill Bap-

tist Church was discontinued. The whole tone of the resolution is libelous in character. The Court will note that it refers to a Dr. Stith, while the petitioner who was entitled to be so addressed is referred to as "Mr." This was done deliberately and disrespected the petitioner to purposely create the impression that he is without standing as a Minister of the Gospel. The resolution clearly reflects upon the honesty and integrity of the petitioner, and has greatly damaged him as alleged in paragraph 9 of the complaint. He has been subject to public scorn, ridicule and contempt by the action of the respondent in writing, aiding and abetting in the adoption, and the publication by the said Executive Committee of the resolution.

It is unusual for the Court of Appeals below to not render an opinion in this case. The petitioner can only surmise the reasons for the dismissal by the Court below of the complaint, and the affirmance of that judgment by the Court of Appeals, but in affirming the judgment the Court's decision if it was predicated upon the grounds that insufficient facts were pleaded to constitute a cause of action, then the decision of the Court of Appeals below conflicts with their own decisions and the decisions of this Court. The Court below in the case of *The Curtis Publishing Co.* v. *Vaughn, 278 F.2d 23* held that where the meaning of words is in dispute an issue of fact arises and must be determined by the jury.

The Court of Appeals could not write an opinion in this case without overruling their decision in The Curtis Publishing Co. v. Vaughn, neither could they have written a decision in this case in view of this Court's decision in *Baker* v. *Warner, 231 U.S. 588, 594*, or the decision of this Court in the case of *Washington Post* v. *Chaloner, 250 U.S. 290, 293*, and their own decision in *Gariepy* v. *Pearson, 92 U.S. App. D.C. 337, 339, 207 F.2d 15* in which this Court denied certiorari *346 U.S. 909*.

If the theory of the Court below is predicated upon the grounds that the respondent himself did not person-

ally sit as a member of the Executive Committee of the District of Columbia Baptist Convention but he only aided and abetted in the adoption and publication of the resolution, then again the Court of Appeals is in error because their decision would conflict with the case of *Washington Gas Light Co. et al.* v. *Lansden, 172 U.S. 534, 43 L.Ed. 543.*

Thus we have a decision of the Court of Appeals below which conflicts not only with their own decisions but with at least three decisions of this Court which are directly applicable to the facts in this case. The charge against this petitioner that his actions were such as to make his church unworthy of further financial support by prosecuting false and fictitious claims certainly is libelous per se and in conflict with all of the decisions not only of this Court, but of the Court below, for they could not have written an opinion in this case without overruling practically every decision they had ever made in cases brought on libelous publications.

CONCLUSION

For the reasons and authorities herein referred to, the petitioner prays that a writ of certiorari be granted directed to the United States Court of Appeals for the District of Columbia Circuit, and that upon a review of this cause, that this case be remanded to the said Court of Appeals with directions to proceed in accordance with the views of this Court.

Respectfully submitted,

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Filed Oct. 3, 1960.
United States Court of Appeals for the District of Columbia Circuit. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,826, September Term, 1960

District Court Civil Action 3201-59

WILLIAM B. ADAMS,
Appellant,

v.

ALVIN O. WEST,
Appellee.

Before: Prettyman, Chief Judge, Bazelon and Fahy, Circuit Judges.

ORDER

This case came on for consideration on the original record and on the briefs of the parties and was argued by counsel.

Upon consideration whereof it is ORDERED by the court that the judgment of the District Court appealed from is affirmed and that appellee shall recover from appellant his taxable costs on appeal and have execution therefor.

Per Curiam.

Dated: October 3, 1960

Clerk's Memorandum of Filing of Petition for Rehearing

No. 15,826—William B. Adams, Appellant, v. Alvin O. West, Appellee.

10-17-60 25—Appellant's Petition for Rehearing and service Filed

Filed Nov. 30, 1960.

United States Court of Appeals for the District of Columbia Circuit. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,826, September Term, 1960

WILLIAM B. ADAMS,
Appellant,

v.

ALVIN O. WEST,
Appellee.

Before: Prettyman, Bazelon and Fahy, Circuit Judges, in Chambers.

ORDER

Upon consideration of appellant's petition for rehearing, it is

ORDERED by the court that the petition for rehearing is denied.

Per Curiam.

Dated: November 30, 1960

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered from 1 to 20, both inclusive, constitute a true copy of the Joint Appendix to the briefs and of the papers and pleadings designated by counsel for appellant in the foregoing Designation of Record, filed in the case of:

WILLIAM B. ADAMS,
Appellant,

v.

ALVIN O. WEST,
Appellee.

No. 15,826, September Term, 1960, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this fourteenth day of February, A.D. 1961

(SEAL)

/s/ Joseph W. Stewart
JOSEPH W. STEWART,

Clerk of the United States Court of Appeals for the District of Columbia Circuit.